

Remarks

Claims 1-25 are pending.

Rejection of Claims under 35 U.S.C. § 102

Claims 1-25 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Shiragaki et al., U.S. Patent No. 6,657,952 (Shiragaki). The applicants respectfully traverses this rejection.

As an initial matter, the Examiner states “[r]egarding claims such as 1, 12 it has been held that the recitation that an element is ‘adapted to’ perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.” Office Action of August 20, 2004, p. 2, ¶ 4. The applicant respectfully disagrees.

The Board of Patent Appeals and Interferences has rejected this argument and the related argument that such language is indefinite. See *Ex parte Ralph B. Brick*, Appeal No. 2000-1794, p.5. The applicant notes that while *Ex parte Ralph B. Brick* is not binding precedent of the Board, its analysis of the this type of argument is both relevant and persuasive. In rejecting this type of argument, the Board refers to *In re Swinehart*, 439 F.2d 210, 213 (CCPA 1971) which states in relevant part:

We are convinced that there is no support, either in the actual holdings of prior cases or in the statute, for the proposition, put forward here, that ‘functional’ language, in and of itself, renders a claim improper. *Id.*

Thus, not only is such functional language as “adapted to . . .” definite, it is a proper way to introduce functional limitations.

Additionally, the applicant respectfully submits that the particular parts of the cited reference that the Examiner has relied upon have not been designated as nearly as practicable, and the pertinence of each reference has not been clearly explained, both as required by 37 C.F.R. § 1.104(c)(2). Nevertheless, the applicants have made every effort to respond to the rejections outlined by the Examiner.

Shiragaki neither teaches nor suggests a network including:

. . . a fourth node connected to the first node by a fifth transmission media adapted to transmit transit data from the fourth node to the first node and a sixth transmission media adapted to transmit transit data from the first node to the fourth node;

the second node operable to receive transit data from the fourth transmission media; detect a first fault in the second transmission media, and forward the transit data from the third node received on the fourth transmission media to the third node on the third transmission media; and

the first node operable to receive transit data on the fifth transmission media; and, irrespective of the existence of the first fault, forward the transit data from the fourth node to the second node on the fifth and first transmission media,

as required by independent claim 1.

Regarding the fourth node, the fifth transmission media, and the sixth transmission media, the Examiner refers to Shiragaki's node **106**, the protection path from node **107** to node **106**, and the "working / active" path from node **105** to node **106**, respectively. Office Action of August 20, 2004, page 3. However, the applicant respectfully submits that neither **Figure 11A** nor **Figure 11B** show a working path between node **105** to **106** (working paths are only shown between nodes **106** and **107**). Moreover, that which the Examiner associates with the applicant's claimed fifth transmission media (i.e., a protection path between nodes **106** and **107**) is not "adapted to transmit transit data from the fourth node to the first node" as required by claim 1. Specifically, the path referenced by the Examiner is between a node he is equating with the claimed fourth node and a node he is equating with the claimed third node.

The Examiner makes no attempt to point out any portion of Shiragaki that teaches or suggests the claimed "the second node operable to . . . detect a first fault in the second transmission media, and forward the transit data from the third node received on the fourth transmission media to the third node on the third transmission media." Instead, the Examiner merely states "wrapping transit data back to third node (using protection/back up path from 108 to 107; faults can any where" Office Action of August 20, 2004, page 3. Nothing referenced by the Examiner teaches or suggests the aforementioned detecting and forwarding. As for "wrapping," nothing in Shiragaki teaches or suggesting wrapping traffic within a node. Instead, Shiragaki teaches the use of additional paths (separate from normal transmission paths) when a fault is encountered.

Finally, regarding the claimed “the first node operable to receive transit data on the fifth transmission media; and, irrespective of the existence of the first fault, forward the transit data from the fourth node to the second node on the fifth and first transmission media,” the Examiner presents no argument whatsoever.

Accordingly, the applicant respectfully submits that claim 1 is allowable over Shirakagi. Claims 2-14 depend from claim 1 and are allowable for at least this reason.

Shirakagi neither teaches nor suggests a method including:

. . . wrapping transit data from a second, faulted ring to a first, intact ring at an upstream node adjacent to a fault; and

maintaining transit data on the first, intact ring between the upstream node and a downstream node adjacent to the fault,

as required by independent claim 15, and generally required by independent claims 18 and 20.

Regarding the claimed wrapping, as noted above, the Examiner states “wrapping transit data back to third node (using protection/back up path from 108 to 107; faults can any where” Office Action of August 20, 2004, page 3. Nothing referenced by the Examiner teaches or suggests “wrapping transit data from a second, faulted ring to a first, intact ring at an upstream node adjacent to a fault.” In particular nothing in Shirakagi teaches or suggesting wrapping traffic at an upstream node adjacent to a fault. Instead, Shirakagi teaches the use of additional paths (e.g., separate from the claimed first and second rings) when a fault is encountered.

Regarding the claimed “maintaining transit data on the first, intact ring between the upstream node and a downstream node adjacent to the fault,” the Examiner presents no argument as to where or how Shirakagi teaches or suggests this method step.

Accordingly, the applicant respectfully submits that claims 15, 18, and 20 are allowable over Shirakagi. Claims 16-17, 19, and 21-22 depend from claims 15, 18, and 20 respectively, and are allowable for at least this reason.

Shiragaki neither teaches nor suggests a network including:

. . . a fourth node connected to the first node by a fifth transmission media adapted to transmit the transit data from the fourth node to the first node and a sixth transmission media adapted to transmit the transit data from the first node to the fourth node; and

the first node operable to detect a fault between the first and second nodes in the second transmission media and forward along a second ring first host data received into the first node along the second ring,

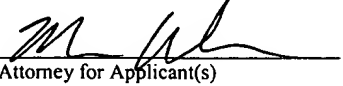
as required by independent claim 23.

As noted above, the Examiner refers to Shiragaki's node 106, the protection path from node 107 to node 106, and the "working / active" path from node 105 to node 106, as teaching the claimed fourth node, the fifth transmission media, and the sixth transmission media, respectively. Office Action of August 20, 2004, page 3. However, the applicant respectfully submits that neither **Figure 11A** nor **Figure 11B** show a working path between node 105 to 106 (working paths are only shown between nodes 106 and 107). Moreover, that which the Examiner associates with the applicant's claimed fifth transmission media (i.e., a protection path between nodes 106 and 107) is not "adapted to transmit transit data from the fourth node to the first node" as required by claim 1. Specifically, the path referenced by the Examiner is between a node he is equating with the claimed fourth node and a node he is equating with the claimed third node.

Regarding the claim requirement that "the first node [is] operable to detect a fault between the first and second nodes in the second transmission media and forward along a second ring first host data received into the first node along the second ring," the Examiner fails to identify any teaching or suggestion from Shiragaki.

Accordingly, the applicant respectfully submits that claim 23 is allowable over Shiragaki. Claims 24-25 depend from claim 23 and are allowable for at least this reason.

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the examiner is requested to telephone the undersigned.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450, on <u>10/4</u> , 2004.	
 Attorney for Applicant(s)	<u>10/4/04</u> Date of Signature

Respectfully submitted,



Marc R. Ascolese
Attorney for Applicant(s)
Reg. No. 42,268
512-439-5085
512-439-5099 (fax)